

Revisions to Latest Draft Dated 12/09/05.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

NON-EXCLUSIVE EASEMENT AGREEMENT

Date: December __, 2005

Grantor: RESLER INTERSTATE 10 DEVELOPMENT
CO., INC. and
HUNT BUILDING COMPANY, LTD.

Grantor's Mailing Address: 4401 North Mesa Street,
El Paso, Texas 79902-1107

Grantee: CITY OF EL PASO, TEXAS, a municipal
corporation

Grantee's Mailing Address: 2 Civic Center Plaza
El Paso, Texas 79901

Property (i) All of Tract 16A, Tract 15S1 and Tract 15V,
A.F. Miller Survey No. 213, and a portion of Tract
15A, A.F. Miller Survey No. 213, El Paso, El Paso
County, Texas; and

(ii) A portion of Tract 15A, A.F. Miller Survey
No. 213, El Paso, El Paso County, Texas, and a
portion of Lot 3, Block 3, Alto Mesa Unit 2,
El Paso, El Paso County, Texas, being more
particularly described on Exhibit A attached hereto.

Easement Purpose: To permit Grantee, its employees, contractors, City
representatives, and agents to enter upon the
Property with such personnel and equipment as is
necessary to inspect, install, maintain, repair and
replace drainage pipes, flumes, drainage riprap,
drainage structures and related improvements,
owned or accepted for maintenance by Grantee, that
are located in or abutting the Property.

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor.

Grant of Easement: Grantor, for the Consideration and subject to the Conditions and for the Easement Purpose, grants, sells, and conveys to Grantee and Grantee's successors a perpetual, non-exclusive easement over, on, and across the entirety of the Property, subject to the Conditions, together with all and singular the rights described in this Agreement (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's successors forever.

Conditions: The following conditions apply to the Easement granted by this Agreement:

1. *Character of Easement.* The Easement is nonexclusive.
2. *Duration of Easement.* The Easement is perpetual.
3. *Reservation of Rights.* Grantor and Grantor's successors and assigns reserve the right to continue to use and enjoy the surface of the Property for all lawful purposes that do not unreasonably interfere with the purposes for which this Easement is being granted, provided, however, that all reservation of rights in favor of Grantor described herein shall cease upon conveyance of the Property to The Frontera Land Alliance ("Frontera"), and Frontera and its successors and assigns shall be fully entitled to all of the rights and benefits reserved in this Agreement.
4. *Operations.* Grantee shall exercise its rights under this Easement in compliance with all applicable state and federal laws, ordinances of the City of El Paso and regulations of governmental entities having jurisdiction over the Property. Grantee agrees that within ninety (90) days of the date of this Agreement, Grantee will work with Frontera to establish mutually agreed routes to be used by Grantee and/or its contractors to access and perform repairs, maintenance and emergency services within the boundaries of the Property. Upon establishment of the agreed routes, Grantee and Frontera will file a summary of such agreed routes in the Real Property Records of El Paso County, Texas. Additionally, at least twenty (20) days prior to exercising its right to enter the Property, Grantee shall notify ~~in writing Frontera Land Alliance ("Frontera")~~ Frontera, its successors or assigns in writing, of the reason for the entry, the date when the entry is planned, the employees and/or contractors who will participate in the entry, the areas within the Property where inspection, repairs or replacements will be made, the number and types of vehicles that will enter the Property and the anticipated length of the operation. Grantee shall not be required to provide advance written notice to Frontera, its successors or

assigns, when Grantee must enter the Property to immediately address emergency conditions that may affect public health and safety. In the event that Grantee accesses the Property due to an emergency, to the extent reasonably possible, Grantee shall follow the ingress and egress ~~plan~~[plans](#) to be developed between Frontera and Grantee. In addition, in the event of an emergency entry, Grantee shall make reasonable efforts to contact Frontera via telephone [and e-mail](#). Frontera shall be required to provide and maintain current contact information with the Grantee. Frontera shall have the right, but not the obligation, to notify Grantee and its contractors in writing and establish a reasonable date and time at which all parties will meet at the Property to mutually develop an ingress and egress plan. The meeting date shall be not less than ten (10) days prior to the planned entry, or on a date as may be mutually agreed upon by Grantee and Frontera. Grantee shall develop, in consultation with Frontera, a point of entry and route that Grantee and its contractors will be obligated to use to access the areas that require inspection, repairs and replacements. Grantee and its contractors have the right to enter the Property from any public street or right of way that abuts the Property; provided, however, the point of entry for any particular operation shall be the one that disturbs and damages the terrain and plants within the Property to the least extent reasonably possible under the circumstances. Grantee agrees to further direct its contractors to use the point of entry and route agreed upon with Frontera so that disturbances and damage to the terrain and plants within the Property are minimized. [To the extent that Grantee and/or its contractors deviate from an agreed route, Grantee agrees that any disturbances and damage to the terrain and plants within the Property will be revegetated in compliance with the vegetation and revegetation requirements set forth in Section 19.20.030 of the City Municipal Code.](#)

5. *Indemnification.* **GRANTEE IS NOT SUBJECT TO THIS PARAGRAPH 5, BUT SHALL REQUIRE ITS CONTRACTORS TO INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, AND THEIR SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL LOSS, COSTS, EXPENSE, SUITS, JUDGMENTS AND DAMAGES (INCLUDING WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES) FOR INJURIES OR DEATH TO PERSONS OR PROPERTY CONNECTED WITH OR ARISING OUT OF THE EXERCISE OF THE RIGHTS UNDER THIS EASEMENT.**

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this Agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity. In the event a restraining order (temporary or permanent) is issued, then Grantor, its successors and assigns, shall release Grantee from liability or any damage not caused by the action or inaction of Grantee as may be determined by a court of law.

7. *Attorney's Fees.* If any party retains an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

8. *Binding Effect.* This Easement is a covenant running with the Property and will bind and inure to the benefit of not only the parties but also their respective successors and assigns.

9. *Choice of Law.* This Agreement will be construed under the laws of the state of Texas. Exclusive venue is El Paso County, Texas.

10. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

11. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Integration.* This Agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

13. *Legal Construction.* If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

14. *Notices.* Any notice required or permitted under this Agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) upon actual delivery or three (3) days following the date when such notice is deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

Grantor: Gary Sapp, Executive Vice President, Hunt Building
Corporation, 4401 North Mesa, El Paso, Texas 79902
(with a copy to Frank S. Ainsa, Jr. Ainsa Hutson, LLP,
5809 Acacia, El Paso, Texas 79912).
Facsimile: (915) 545-2631 (with a copy to (915) 845-7800)

Grantee: City Manager, City of El Paso
Two Civic Center Plaza, El Paso Texas 79901
(with a copy to the City Attorney, Two Civic Center
Plaza, 9th Floor, El Paso, TX 79901)
Facsimile: (915) 541-4501 (with a copy to (915) 541-4710)

Frontera: 2626 N. Mesa, Suite 258
El Paso, Texas 79902-3130
(with a copy to Amy Schoemaker, c/o Willis Homes, Inc.
5380 N. Mesa, Suite 114, El Paso, Texas 79912
Facsimile: (915) 351-8226 (with a copy to (915) 585-7720)

GRANTOR:

Resler Interstate 10 Development Co., Inc.

By: _____
Name: Gary Sapp
Title: President

Hunt Building Company. Ltd.

By: HBC Construction Managers, LLC
Its General Partner

By: Hunt Building Corporation
Its Authorized Member

By: _____
Name: Gary Sapp
Title: Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of December, 2005, by Gary B. Sapp, Executive Vice President of Hunt Building Corporation, authorized member of HBC Construction Managers, LLC, General Partner of Hunt Building Company, Ltd. on behalf of said limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of December, 2005, by Gary B. Sapp, President of Resler Interstate 10 Development Co., Inc. on behalf of said corporation.

Notary Public, State of Texas

GRANTEE:

City of El Paso

By: _____
Name: Joyce Wilson
Title: City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Carolyn J. Crosby
Assistant City Attorney

Rudy Valdez
Chief Urban Planner

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of December, 2005, by Joyce Wilson, City Manager of the City of El Paso, on behalf of the City of El Paso.

Notary Public, State of Texas